

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

09-022-0

REPLACEMENT

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AGREEMENT WITH KOHL'S DEPARTMENT STORES, INC., CONVEYING CERTAIN PROPERTY IN EXCHANGE FOR CONVEYANCE OF OTHER PROPERTY, BOTH ADJACENT TO KOHL'S DEPARTMENT STORE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. City council hereby finds that the conveyance of the property referenced as the "Exhibit A Property" and the "Exhibit C Property" in Public Document No. _____, a copy of which is on file in the office of the city clerk, is properly zoned for the proposed parking project as described in said public document and that therefore the proposed conveyance has no relationship to the city's comprehensive plan as said finding is provided for in Section 2-176 a) of the City Code.

Section 2. There is on file in the office of the city clerk as Public Document No. _____, a written estimate of the market value of the "Exhibit A Property" and the "Exhibit C Property" prepared by the city assessor.

Section 3. The city council hereby finds that the conveyance of the "Exhibit A Property" and the "Exhibit C Property" to Kohl's Department Stores, Inc., in accordance with the terms and conditions of Public Document No. _____, furthers the interests of the city by preserving and maintaining within the city an important member of the city's business community, by assisting in improving the traffic flow in the Miller Hill area and by increasing and further protecting more and more valuable natural resources in said area and that said conveyance will result in property of greater financial and environmental value being received by the city.

Section 4. The proper city officials are hereby authorized to enter into that certain real property swap agreement with Kohl's Department Stores, Inc., a Delaware corporation, authorizing the sale of land as therein provided and to execute all documents necessary thereto.

Section 5. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

PLNG/ATTY REA:blj 5/5/2009

STATEMENT OF PURPOSE: This ordinance authorizes the agreement to implement Resolution No. 09-0234, which indicated the council's intent to authorize a land exchange with Kohl's Department Stores to allow them to replace parking on their site being lost because of the road realignments as part of the Highway 53/Miller Hill Mall area reconstruction project.

It allows Kohl's to proceed with a plan to exchange certain wetland property adjacent to their store and to Miller Creek for other wetland property in which the city has an interest, also adjacent to the store, which will allow them to replace parking which they are losing due to the Highway 53/Miller Hill Mall area reconstruction project and which they believe is necessary to maintain the viability of their store.

Due to modifications to Sundby Road and other road work adjacent to their store on Miller Trunk Highway, Kohl's is anticipating losing at least 111 of the existing 424 store parking spaces. Kohl's considers the existing level of parking to be substandard and they have determined that further reducing their available parking is unacceptable. They anticipate that the resulting reduction in parking will have a material negative effect on the competitiveness of the store. Even with a planned reconfiguration of their parking lot which will add an additional 39 spaces, they will still have 72 fewer parking spaces for their store. This loss of parking has caused them to have concerns about the future of the facility.

In order to protect the viability of the store in their view, Kohl's has developed a plan to develop an additional 72 parking spaces along the southwest side of the store, a solution which would not only restore the number of parking spaces to its original level at a commercially acceptable location but would also improve the circulation around the building for delivery of merchandise to the store. The complication for them is that the property in question is owned by the city, having been conveyed to the City at the time of the original development, essentially for environmental reasons.

Understanding these objectives and in an attempt to respect the purpose of the original conveyance, Kohl's has proposed that they exchange the City's interests in the subject property, located to the southwest of the store which is well away from Miller Creek, for property owned by Kohl's to the northeast of the store which is actually occupied by the streambed and banks of Miller Creek along with a culvert through which the creek is channeled and over which the existing access road is located. The area of the property offered by Kohl's is approximately twice that of the property they are requesting and, from an environmental perspective, the property to be received by the city would appear to have greater value.

As indicated above, Kohl's intends to use the property acquired from the city for parking. Because the area impacted is in a floodplain and is wetlands, they intend to develop a one-level, piling-supported structure upon which to place that parking which will allow the wetlands underneath the parking structure to continue to function substantially as wetlands, albeit the nature of the vegetation would undoubtedly be altered. The exchange would also require that Kohl's would be solely responsible for securing all necessary approvals for the development including permits from the Corps of Engineers and the MnDNR.

In addition to the property conveyed to Kohl's, the city would agree to grant a temporary construction and environmental monitoring easement over some 4,500 square feet of wetland property adjacent to the westerly-most corner of the store building. After construction is completed, this area would be restored to its pre-construction condition.

As was discussed during the consideration of 09-0234R, Kohl's will still be required to get any and all required permits from federal, state and local authorities in order to proceed and if unsuccessful, the property would revert to public ownership.